A

MURUGAPILLAI RENGASAMY

v.

PP

B

COURT OF APPEAL, PUTRAJAYA
ZALEHA ZAHARI JCA
KN SEGARA JCA
HISHAMUDIN MOHD YUNUS JCA
[CRIMINAL APPEAL NO: N-05-22-2008]

C

22 MARCH 2010

CRIMINAL LAW: *Penal Code - Section 302 - Appeal against conviction and sentence - Whether learned judge properly appraised and evaluated direct and circumstantial evidence - Whether defence of intoxication and*

D

self-defence rightly rejected - Evidence Act 1950, ss. 27, 134 - Penal Code, s. 100

The appellant appealed against his conviction and death sentence for murder under s. 302 of the Penal Code ('PC'). The

E

prosecution's case was based on direct and circumstantial evidence. The appellant contended that there was a lack of judicial appreciation by the learned judge of the evidence for the defence and that of the prosecution.

Held (dismissing the appeal)

F

Per Zaleha Zahari JCA delivering the judgment of the court:

(1) The learned judge had accepted the evidence given by PW9, the witness who saw the appellant slash the deceased and rejected the appellant's denial of having done so. The learned judge had

G

the advantage of observing the demeanour of witnesses and was in a better position than an appellate court to assess the probative value of the evidence. Findings of fact by a trial judge would not be disturbed by an appellate court unless there was sufficient judicial appreciation of the evidence. (para 20)

H

(2) The corroboration of the testimony of a single witness must depend upon the facts and circumstances of each case and no general rule could be laid down. Much depended upon the judicial discretion of the trial judge. A court could act and

I

might act on the testimony of a single witness though

uncorroborated (see s. 134 of the Evidence Act 1950). The maxim "evidence has to be weighed and not counted" was applicable. (para 21)

(3) The learned judge was clearly right in accepting the evidence given by the two key witnesses, PW7 and PW8, as strong circumstantial evidence of the appellant's involvement. The evidence of PW7 receiving a "parang" from the appellant that material night was clearly incriminating. The conduct of the appellant in leaving the place where the incident took place and after the incident, the surrendering of himself at the police station the following day, was certainly material and significant. (para 22)

(4) Under s. 27 of the Evidence Act 1950, the information must lead to the discovery of a fact. The fact of discovery must be the consequence, and the information, the cause of the recovery. The information leading to the discovery must relate distinctly to the object so recovered and nothing more. On the facts, the information given by the appellant of him having handed over a "parang" to PW7, led the police to meet up with PW7 and PW8 and to the premises where the "parang" was recovered. The learned judge rightly admitted the information given by the appellant to PW6 under s. 27 that led to the discovery of the "parang". It followed that the learned judge was right in finding that the prosecution proved a *prima facie* case against the appellant and in calling for the defence. (paras 23, 24 & 25)

(5) It was incumbent upon the appellant to prove the defence of intoxication on a balance of probabilities. The reasoning of the learned judge was sound in rejecting the defence of intoxication. In any event, the defences of denial and intoxication were never put across to the prosecution's witnesses during their cross-examination. Those defences appeared to be afterthoughts. (para 26)

(6) To succeed on the defence of self-defence, there must be evidence that the appellant was under a belief and had reasonable apprehension of being in danger or grievous hurt by his assailant (s. 100 PC). The defence of self-defence was rightly rejected by the learned judge for the reasons explained in his judgment. (para 27)

A **(7)** The learned judge properly evaluated and appraised the evidence, direct and circumstantial, adduced by the prosecution and that of the defence. The evidence was strong warranting a conviction under s. 302 PC. The prosecution proved its case beyond reasonable doubt. (para 28)

B

Bahasa Malaysia *Translation Of Headnotes*

Perayu merayu terhadap sabitan dan hukuman mati kerana kesalahan bunuh di bawah s. 302 Kanun Keseksaan ('KK'). Kes pendakwaan adalah didasarkan kepada kedua-dua keterangan terus
C dan keterangan ikut keadaan. Hujah perayu adalah bahawa yang arif hakim telah gagal memberikan pertimbangan-pertimbangan kehakiman yang sewajarnya terhadap keterangan-keterangan yang dikemukakan oleh pembelaan mahupun pendakwaan.

D **Diputuskan (menolak rayuan)**
Oleh Zaleha Zahari HMR menyampaikan penghakiman mahkamah:

(1) Yang arif hakim telah menerima keterangan yang diberikan oleh
E SP9, saksi yang melihat perayu menetak si mati dan menolak penafian yang dibuat oleh perayu. Yang arif hakim mempunyai kelebihan melihat tingkahlaku saksi-saksi dan berada dalam kedudukan yang lebih baik dari sebuah mahkamah rayuan untuk menaksir nilai probatif keterangan-keterangan. Dapatan-dapatan
F fakta oleh hakim bicara tidak harus diganggu oleh sebuah mahkamah rayuan kecuali jika terdapat kekurangan pertimbangan kehakiman terhadap keterangan.

(2) Sokongan terhadap testimoni seorang saksi tunggal adalah
G bergantung kepada fakta dan halkeadaan kes dan tiada satu kaedah am boleh ditetapkan untuk itu. Ia banyak bergantung kepada budibicara kehakiman hakim bicara itu sendiri. Apapun, sesebuah mahkamah boleh bertindak atas testimoni seorang saksi tunggal walaupun tidak disokong (lihat s. 134 Akta
H Keterangan 1950). Maxim "keterangan harus dinilai dan bukan dikira" adalah terpakai.

(3) Yang arif hakim jelas betul dalam menerima keterangan yang diberikan oleh dua saksi utama, PW7 dan PW8, sebagai keterangan ikut keadaan yang kukuh mengenai keterlibatan
I perayu. Keterangan PW7 menerima sebilah parang dari perayu

pada malam berkenaan jelas menunjukkan kebersalahan. Tingkahlaku perayu dalam meninggalkan tempat kejadian selepas insiden, serta penyerahan dirinya di balai polis keesokan harinya, adalah jelas material dan penting.

(4) Di bawah s. 27 Akta Keterangan 1950, maklumat harus membawa kepada penemuan suatu fakta. Ertinya, fakta tentang penemuan harus merupakan akibatnya, dan maklumat adalah punca bagi penemuan. Maklumat yang membawa kepada penemuan juga mestilah secara khusus berhubung dengan objek yang ditemui dan tidak selainnya. Berdasarkan fakta, maklumat yang diberikan oleh perayu bahawa dia telah menyerahkan parang kepada SP7, telah membawa polis kepada SP7 dan SP8 dan seterusnya kepada premis di mana parang dijumpai. Maka yang arif hakim telah dengan betulnya menerima-masuk maklumat yang diberikan oleh perayu kepada SP6 di bawah s. 27 yang membawa kepada penemuan parang. Ianya mengikut bahawa yang arif hakim betul dalam mendapati bahawa pendakwaan telah membuktikan suatu kes *prima facie* terhadap perayu dan dalam memanggil pembelaan.

(5) Adalah menjadi tanggungjawab perayu untuk membuktikan pembelaan mabuk atas imbangan kebarangkalian. Taakulan yang arif hakim dalam menolak pembelaan mabuk adalah kukuh. Walau apapun, pembelaan penafian dan mabuk tidak pernah pun diajukan kepada saksi-saksi pendakwaan semasa pemeriksaan balas. Maka pembelaan-pembelaan tersebut mirip kepada satu "afterthought".

(6) Untuk berjaya dalam pembelaan pertahanan diri, harus wujud keterangan bahawa perayu-perayu berada di bawah kepercayaan dan mempunyai kebimbangan yang munasabah akan berada di dalam bahaya atau dicederakan dengan teruk oleh penyerangnya (s. 100 KK). Pembelaan pertahanan diri telah dengan wajarnya ditolak oleh yang arif hakim atas alasan-alasan seperti yang dinyatakan oleh beliau dalam penghakimannya.

(7) Yang arif hakim telah dengan teraturnya menilai dan menimbang keterangan-keterangan, sama ada keterangan terus atau ikut keadaan, yang dikemukakan oleh pendakwaan atau pun pembelaan. Keterangan adalah kukuh sekaligus mewajarkan sabitan di bawah s. 302 KK. Pendakwaan telah membuktikan kesnya di luar keraguan munasabah.

A **Case(s) referred to:**
Aladin v. PP [1964] 1 LNS 4 FC ***(refd)***
Aziz Muhamad Din v. PP [1997] 1 CLJ Supp 523 HC ***(refd)***
Balachandran v. PP [2005] 1 CLJ 85 FC ***(refd)***
Lee Wong Tiang v. PP [1970] 1 LNS 58 FC ***(refd)***
B *Sum Kum Seng v. PP [1981] 1 LNS 76 FC* ***(refd)***

Legislation referred to:
Evidence Act 1950, ss. 27, 134
Penal Code, ss. 85(2)(b), 100, 300(a), (b), (c), (d), 302

C *For the appellant - Sukhaimi Mashud; M/s Teh Poh Teik*
For the respondent - Awg Armadajaya Awg Mahmud DPP

[Appeal from High Court, Seremban; Criminal Trial No: 45-3-2003]

Reported by Usha Thiagarajah

D

JUDGMENT

Zaleha Zahari JCA:

E **[1]** This is an appeal against the decision of the learned High Court Judge of Seremban dated 11 January 2008 convicting the appellant for an offence under s. 302 Penal Code and imposing the sentence of death upon him. We dismissed the appeal for the following reasons.

F

[2] The charge preferred against the appellant reads as follows:

> Bahawa kamu pada 19.7.2002, jam lebih kurang jam 8.00 malam, di Sebelah Kiri Jalan No. 2, Kawasan Perumahan Pekerja Ladang Air Hitam, Jempol, di dalam Daerah Jempol, di dalam Negeri,
G Negeri Sembilan telah melakukan pembunuhan ke atas Ramakrishnan a/l Nadesan, KP No. A 2224044, dengan itu kamu telah melakukan suatu kesalahan yang boleh di hukum dibawah seksyen 302 Kanun Keseksaan.

H **[3]** The prosecution's case rests on both direct and circumstantial evidence. The learned counsel for the appellant in his submission contended that there was a lack of judicial appreciation by the learned judge of the evidence for the defence and that of the prosecution.

I

Findings Of The High Court Judge

[4] Based on the evidence before him the learned trial judge's findings are as follows.

[5] The fact that Ramakrishnan a/l Nadesan, the person named in the charge ("the deceased"), was dead was not disputed. Dr. Hjh. Sharifah Safoorah bt. Syed Alwee Al'aidrus (PW5), the person who conducted the post mortem on the deceased, in her report described in detail the injuries sustained by the deceased arising from which he died. PW5 stated the cause of death of the deceased to be, "incise wound on the head".

[6] The direct evidence which the learned judge accepted was that given by Jayaraman a/l Balakrishnan (PW9). PW9 was an eye witness as to how the deceased sustained the injuries described in detail by PW5. PW9 had testified that he saw the appellant slashing the deceased with a parang on the head and stomach. The learned trial judge accepted PW9's testimony notwithstanding PW9's admission he had consumed liquor earlier on that night on the following grounds. As PW9 was related to the appellant, there was no reason for PW9 to victimize the appellant by lying. He accepted PW9's testimony that he did not lose his self control and was aware of what was then happening around him on the night in question. PW9 had testified that although it was dark visibility was good. This part of PW9's evidence was supported by the evidence of ASP Makhetar bin Yaacob (PW10), the Investigating Officer in this case, who confirmed that the weather was good and the area was lighted by a street light. In the learned judge's assessment, PW9 was a credible witness. He then made a finding of fact that the appellant was the person who caused the injuries sustained by the deceased arising from which the deceased died.

[7] The learned trial judge also held on the evidence adduced that there exists strong circumstantial evidence corroborating the direct evidence of the appellant's involvement. The learned judge accepted that evidence of two witnesses, namely, Ammakanu a/p Munisamy (PW7) and Ana Raja a/l Arnakili's (PW8). PW7 had testified that the appellant had handed her a parang that night in question. PW7 stated that after washing the parang which the appellant had given her, she had handed it to PW8. The learned judge also accepted PW8's evidence of having thrown the parang which PW7 had given

A him to the top of a garage of premises No. C5. The learned judge's finding was that PW7 and PW8 were credible witnesses. He noted that PW7 and PW8's evidence had not been challenged in cross examination by the defence.

B **[8]** On the facts of this case there was also the admission by the learned trial judge of the evidence given by Chief Inspector Md Zin bin Kasran (PW6) pursuant to s. 27 of the Evidence Act 1950. PW6 had testified to having recorded the following information given by the appellant in his police report (exh. P17) "... suspek C telah memberitahu saya parang yang telah diserahkan kepada emak saudaranya nama Ammakanu a/p Munisamy yang tinggal di Ladang Air Hitam ...". Although this information was not the exact words related by the appellant, the learned judge held that it was still admissible under s. 27 (see *Sum Kum Seng v. Public Prosecutor* [1981] D 1 LNS 76).

[9] The learned judge ruled that the information given by the appellant which had led PW6 to meeting firstly PW7, then PW8, and thereafter, to the recovery of a parang (exh. P14) was admissible under s. 27 of the Evidence Act 1950. He further held E that the recovery of the parang P14 consequential upon the receipt of the information given by the appellant to PW6 of having handed to PW7 a parang, fortified the appellant's involvement in the incident where the deceased sustained the injuries, arising from which he died.

F

[10] On the issue as to whether the appellant had acted with the intention or with knowledge that could fall under any one of limbs (a), (b), (c) and (d) of s. 300 of the Penal Code, the learned judge's findings are as follows. Intention could be inferred from the G nature of the injuries sustained by the deceased. PW5's report shows that the deceased sustained not less than four serious injuries on the head, chest and hand. The injuries at the head involved 'meninges' and 'left frontal lobe' at the brain. The serious injury at the chest caused two of the bones to be broken. The inference H which the learned judge drew from the injuries sustained by the deceased was that the appellant clearly had the intention to cause death under limb (a) of s. 300; or had the intention to cause bodily injury to the deceased knowing that such injury would cause death under limb (b) of the same section.

I

[11] Based on these findings of fact the learned judge held that the prosecution had, at the end of the prosecution's case, proved a *prima facie* case against the appellant under s. 302 of the Penal Code; and he called upon the appellant to enter his defence.

The Defence

[12] In respect of the three defences advanced by the appellant, namely, denial in having caused the injuries to the deceased, intoxication, and that of self defence, the learned judge's findings are these.

[13] He rejected the appellant's denial of non involvement for the following reasons: the fact that the appellant did not deny being present at the scene and was a witness to PW9 being involved in a fight with the deceased; the appellant's admission that he went home to take a parang upon seeing a person by the name of Muniandy holding an axe; and the fact that the appellant returned to the scene with a parang where the fight between PW9 and the deceased was still ongoing.

[14] Upon assessing the credibility of the two witnesses and deciding whose evidence to accept, whether that of PW9 or the appellant, the learned judge accepted the evidence of PW9 who had testified to seeing the appellant attacking the deceased and rejected the appellant's denial. The appellant's denial of having given the parang to PW7 that night in question was also rejected after having accepted the evidence given by PW7 as mentioned earlier on in this judgment. The fact that the appellant had handed over to PW7 a parang soon after the incident was considered as incriminating. The fact that PW8 subsequently threw the parang which he received from PW7 and the fact that PW6 subsequently recovered the parang P14 at the place shown by PW8 was clearly strong circumstantial evidence implicating the appellant.

[15] On the defence of intoxication, the burden of proof of which lies upon the appellant, the learned trial judge noted that there was no evidence as to the amount of liquor the appellant had consumed between 5pm to 7pm that day. No expert evidence was produced as to the effect of the consumption of the amount liquor by the appellant on that day in question. This defence was accordingly not established.

[16] In ascertaining what was the state of mind of the appellant at the material point of time, the learned trial judge took into consideration the appellant's conduct prior and subsequent to the incident. The appellant himself had testified that although he had consumed the alcohol, he was able to find his way home. Upon arriving home, he was able to identify the persons who were then present, including the deceased and PW9. The appellant was able to recall in detail the fight that took place between the deceased and PW9. The appellant's testimony of the persons involved in the fight falling on to the ground was confirmed by PW9. These evidence prove that the appellant knew what was then happening around him. The appellant considered it necessary for him to go home upon seeing Muniandy armed with an axe and then to return to the scene armed with a parang.

[17] The learned judge was of the view that the appellant's conduct subsequent to the incident was not consistent with the reaction of a person in a state of intoxication. The appellant had testified that after the fight he wanted to go to the police station to lodge a police report. This shows that the appellant knew what had transpired was wrong. Likewise, the act of giving the parang to PW7. These actions were inconsistent with the conduct of one who was in a state of intoxication to the level specified in s. 85(ii)(b) of the Penal Code.

[18] Finally, on the defence of self defence, the burden lies on the appellant to prove on a balance of probabilities that he acted in self defence. The appellant's case was that he took a parang to defend himself when he saw Muniandy returning to the scene of the incident with an axe. Whether or not such apprehension existed on the part of the appellant is one of fact. There was however no evidence to show the appellant being in a state of danger of the deceased injuring him. The victim in this case is the deceased, not Muniandy. There was no evidence whatsoever to show there was a fight between the appellant and the deceased. In fact the evidence shows that the deceased was on the ground wrestling with PW9 when the appellant attacked the deceased. There was no evidence indicating the deceased being armed with a weapon when the appellant attacked him in the manner which he did. In the circumstances, the defence of self defence was also rejected by the learned trial judge.

[19] The learned judge then concluded that the appellant had failed to raise a reasonable doubt against the prosecution's case, and the prosecution had proved their case beyond reasonable doubt. The appellant was therefore found guilty of the offence charged; and he was accordingly sentenced to death.

Decision

[20] The learned judge had accepted the evidence given PW9, the witness who saw the appellant slashing the deceased, and had rejected the appellant's denial of having done so. It is well established that a trial judge who has had the advantage of observing the demeanour of witnesses is in a better position than an appellate court to assess probative value of the evidence. It is also trite law that findings of fact by a trial judge will not be disturbed by an appellate court unless there has been insufficient judicial appreciation of the evidence.

[21] Whether corroboration of the testimony of a single witness is necessary must depend upon the facts and circumstances of each case and no general rule can be laid down. Much depends upon the judicial discretion of the trial judge. As a general rule, a court can and may act on the testimony of a single witness though uncorroborated (see s. 134 of the Evidence Act; *Balachandran v. PP* [2005] 1 CLJ 85 (Federal Court); *Aziz Muhamad Din v. Public Prosecutor* [1997] 1 CLJ Supp 523). The maxim, 'evidence has to be weighed and not counted' applies.

[22] We are of the view that the learned judge was clearly right in accepting the evidence given by two key witnesses namely, PW7 and PW8 as strong circumstantial evidence of the appellant's involvement. The evidence of PW7 receiving a parang from the appellant that night was clearly incriminating. The conduct of the appellant in leaving the place where the incident took place, and after the incident, surrendering of himself at the police station the following day was certainly material and significant.

[23] For s. 27 of the Evidence Act 1950 to apply, the information must be such that it led to the discovery of a fact. The fact of discovery must be the consequence, and the information the cause of the recovery. The information leading to the discovery must relate distinctly to the object so recovered and nothing more.

[24] On the facts of this case, pursuant to the information given by the appellant of having handed over a parang to PW7 had led the police to meeting PW7 and PW8, and to the premises where the parang P14 was recovered. The learned judge had admitted the information given by the appellant to PW6 under s. 27 of the Evidence Act 1950 leading to the discovery of the parang. We are of the view that he was right in doing so.

[25] The learned judge was therefore right, based on the evidence before him, in finding that the prosecution had proved a *prima facie* case against the appellant; and in calling upon him to enter his defence.

[26] It was incumbent upon the appellant to prove the defence of intoxication on a balance of probabilities (see *Aladin v. Public Prosecutor* [1964] 1 LNS 4 and *Lee Wong Tiang v. Public Prosecutor* [1970] 1 LNS 58). In our considered opinion the reasoning of the learned judge in rejecting the defence of intoxication is sound. In any event, the defences of denial and intoxication were never put across to the prosecution's witnesses during their cross-examination. The principle on this point is clear. All serious allegations should have been put in cross-examination. These defences raised appear to be afterthoughts.

[27] To succeed on the defence of self defence, there must be evidence that the appellant was under a belief and had a reasonable apprehension of being in danger of death or grievous hurt by his assailant (s. 100 of the Penal Code). The defence of self defence was rightly rejected by the trial learned judge for the reasons explained in his judgment.

[28] To conclude, we find the learned judge had properly evaluated and appraised the evidence, both direct and circumstantial, adduced by the prosecution, as well as that of the defence. The evidence before the judge was strong warranting a conviction under s. 302 of the Penal Code. The prosecution had proved their case against the appellant beyond reasonable doubt.

[29] The appeal was accordingly dismissed and the decision of the High Court Judge affirmed.